
**COMMISSION MEETING
THURSDAY, AUGUST 8, 2002
MINUTES**

Chair Orr called the meeting to order at 1:30 p.m., at the Shilo Inn located in Ocean Shores. He welcomed the attendees and introduced members and staff present:

MEMBERS PRESENT: **COMMISSIONER GEORGE ORR, Chair;**
 COMMISSIONER LIZ McLAUGHLIN, Vice Chair;
 COMMISSIONER CURTIS LUDWIG;
 COMMISSIONER JANICE NIEMI;
 COMMISSIONER ALAN PARKER;
 SENATOR MARGARITA PRENTICE;
 SENATOR SHIRLEY WINSLEY;
 REPRESENTATIVE ALEX WOOD;

OTHERS PRESENT: **RICK DAY, Executive Director;**
 ROBERT BERG, Deputy Director, Operations;
 ED FLEISHER, Special Assistant, Tribal & Government Affairs;
 DERRY FRIES, Assistant Director, Licensing Operations;
 CALLY CASS-HEALY, Assistant Director, Field Operations;
 AMY PATJENS, Manager, Communications & Legal;
 JERRY ACKERMAN, Assistant Attorney General;
 SHIRLEY CORBETT, Executive Assistant

Employee Service Recognition Awards:

Director Day and **Commissioner Orr** presented the following employee recognition awards: Kathy Mills and Silvia Reyes, 5-year service award; Dave Trujillo, 10-year award; and Delores Motz, 15-year award.

1. REVIEW OF AGENDA AND DIRECTOR'S REPORT:

Director Day reviewed the agenda and noted there were no changes from the posted agenda. **Director Day** noted that time was set aside on Thursday for a government-to-government discussion to provide time for those tribal representatives present to share a few words of wisdom regarding how relationships might be strengthened. He also noted that after adjournment, there would be an informal government-to-government dinner function.

Director Day provided the Director's Report, as follows:

- A) Monthly Update Reports: **Director Day** addressed the Administrative Case Update, and noted there were three licensees up for variances under the Bingo rules. That action has been set forward to October because of the need for both sides to do more work in preparing an organized presentation for consideration by the Commission. A Seizure Update and an update on Tribal Compacts were included in the agenda packet.

- B) News Articles: **Director Day** addressed the articles contained in the agenda packet relating to various tribal activities involving the Cowlitz Tribe, the Puyallup Tribe, and the Chinook Tribe. A magazine article was inserted

pertaining to Indian gaming and economic development. An article about the hypocrisy of the state with regard to a Yakama card room, and articles discussing Lakewood and potential limitations on card rooms were included in the agenda packet.

- C) **Budget Meeting Update:** **Director Day** recalled that the Commission left the last meeting requesting another meeting with the staff of the Office of Financial Management (OFM) and staff of the Senate Ways and Means Committee and House Appropriations. That meeting took place on July 17, to discuss the balance transfers that occurred and to note that such transfers jeopardizes the role and function of the Commission, and to advocate that no further transfers be recommended. Director Day affirmed it was a productive discussion, and the parties present acknowledged the state of the Commission's current cash balance. Director Day noted that OFM and legislative staff received current information about the Commission, its operations, and budget needs.

Director Day noted that subsequent to the \$2.45 million withdrawal by the Treasurer from the Gambling Revolving Account, combined with a revenue shortfall, the Commission moved forward with significant reductions. The budget the Commission will consider demonstrates the continued impacts because it will be \$700,000 under what the Commission approved for the last biennium. The projected cash balance at the end of the biennium will be just at the \$5 million level.

Director Day addressed the termination of the Commission's contract with the Council on Problem Gambling, and addressed a memorandum that asks the Commission to consider authorizing the director to contract with the Council on Problem Gambling for a directly-reimbursed cost related to the 1-800 hotline, in the amount of \$22,400 upon contract review and approval by Assistant Attorney General Ackerman.

Commissioner Ludwig made a motion seconded by **Commissioner McLaughlin** to accept the proposed budget for the Council on Problem Gambling. *Vote taken; the motion passed unanimously.*

Director Day announced a hearing has been scheduled for August 13, before the combined House and Senate Committees to discuss the autonomy of the Commission. Commissioners Niemi and Parker will attend. Staff designed a 30-minute presentation that will cover why the Commission was created, what it's designed to do, its activities, how it expends its funds, and why the state would be in jeopardy without the Commission and its services.

2. **New Licenses, Changes, and Tribal Certifications:**

Commissioner McLaughlin made a motion seconded by **Commissioner Ludwig** to approve the new licenses, changes, and tribal certifications listed on pages 1 through 31 of the agenda packet under License Approvals. *Vote taken; the motion carried with five aye votes.*

3. **Manufacturer Review:**

PDS Gaming Corporation, Las Vegas:

Derry Fries, Assistant Director, reported this organization has applied for a Class B manufacturer license in the state. The company originally applied for a manufacturer's license to assemble and market the Digital Card System based upon an agreement with Digideal Corporation; however, the agreement was terminated. PDS Gaming, Inc., still wishes to be licensed as a manufacturer for future opportunities. The corporation has been licensed as a service supplier in Washington since April 2002. Their headquarters are located in Las Vegas, Nevada. PDS and Company holds 72 percent of the corporate stock for various investors. PDS is a clearinghouse for large institutional investors and mutual funds. Some of the largest investors are Bear Stearns, State Steel Bank, Steiffel, Nichols & Company, and Bank of New York. None of them has more than five percent of the corporate stock. Peter Cleary is the corporate president and acting treasurer.

Special agents from the Commission's Financial Investigations Unit conducted personal and criminal background investigations in all substantial interest holders and their spouses. Special agents also completed an onsite inspection of the corporate and financial records, and toured the manufacturing facility in Las Vegas, Nevada. No disqualifying information was noted. The corporation is currently licensed in 10 states: Iowa, Colorado, Illinois, Indiana, Minnesota, Mississippi, New Jersey, New Mexico, Nevada, and the state of Washington. PDS Gaming currently has several revolving credit lines with various financial institutions and cash reserves that would likely meet their capital

requirements for any future manufacturing efforts.

Based on the pre-licensing review and investigation, staff recommends the licensure of PDS Gaming Corporation as a Class B Manufacturer. Mr. Joe Rolston was present to represent the organization.

Commissioner Ludwig asked if there had ever been any problems with this licensee since they were licensed as a service supplier in April 2000. **Mr. Fries** replied there were none at all. **Commissioner McLaughlin** asked if the company brings forth a product, whether the Commission is required to license that product and Mr. Fries affirmed. **Commissioner Parker** noted in the report that PDS had been engaged in an agreement with Digideal and that agreement is now terminated. He inquired if PDS envisioned any future relationship with Digideal.

Mr. Rolston introduced himself as Executive Vice President and General Counsel, and responded that PDS had a longstanding relationship with Digideal, which although terminated, was terminated in a manner that allowed them some limited licensing for the existing inventory in their possession (about 74 units). PDS has an ongoing relationship with Digideal in the sense that they have a license to use that proprietary product and distribute it on their hardware with their software to some limited jurisdictions. At this time, PDS does not anticipate any further developments in that relationship; however, as business and gaming progresses and changes, they may entertain some future opportunities.

Commissioner Ludwig made a motion seconded by **Commissioner Parker** to approve licensure of PDS Gaming as a Class B Manufacturer in the state of Washington. *Vote taken; the motion passed with five aye votes.*

Bud Jones Company, Inc., Las Vegas:

Derry Fries, Assistant Director, reported this organization has applied for a Class B manufacturer license and a Class A distributor license to market casino games and supplies in the state. On October, 2000, Bourgogene et Grasset of Beaune, France, purchased the Bud Jones Company, Inc., who has been licensed in the state since March of 1995. Bud Jones Company, Inc. is owned 100 percent by Bourgogene et Grasset of Beaune and by Holding Wilson SA who owns 79.74 percent of the stock. Gerard Charlier, Corporate President, has 11.43 percent, and eight other minority stockholders have at least below a substantial interest that was not investigated. Francois Correiet owns 99 percent of the shares in Holding Wilson SA. Holding Wilson SA is an environmental and infrastructure consulting firm engaged in joint ventures with financial institutions and insurance companies on an international basis. The corporation's in-state registered agent is Cathy Champ. Special agents of the Financial Investigations Units and the Field Operations Division conducted personal and criminal history background investigations on all substantial interest holders and their spouses. They also initiated and completed a financial investigation on the corporation and other substantial interest holders, and completed an onsite inspection of the corporate manufacturing facilities in Nevada and Kansas. No disqualifying information was found. The Bud Jones Company, Inc., is currently licensed in Louisiana, Illinois, Iowa, Mississippi, New Jersey, and with one tribal gaming commission. The majority stockholders of Bourgogene et Grasset, Holding Wilson SA and Gerard Charlier provided the source of funds for the purchase of Bud Jones Company, Inc.

Based on staff's review of the application, financial documents, and criminal background information, the applicant qualifies for manufacturer and distributor licenses in Washington. Based on the investigation, staff recommends approval of the Bud Jones Company as a Class B Manufacturer and a Class A Distributor. Mr. Frank Miller and Dave Malone, Law Offices, were present.

Commissioner Ludwig asked if there had been any problems of any kind with this licensee. **Mr. Fries** responded there had been none at all from the previous licensee, or the current owner. **Frank Miller** asked that the record reflect their appreciation to Commission staff, who did an excellent job in processing this application.

Commissioner Ludwig made a motion seconded by **Commissioner McLaughlin** to approve The Bud Jones Company, Inc., as a Class B Manufacturer and a Class A distributor in the state of Washington. *Vote taken; the motion passed with five aye votes.*

4. House Banked Card Room Report:

Entertainment Developers NW, LLC, d/b/a/Blue Mountain Tavern, Walla Walla:

Derry Fries, Assistant Director, reported this organization has applied for a license to operate five tables of house-banked card games. The applicant was formed as a limited liability corporation in December of 1999. The LLC

WSGC Meeting, Ocean Shores

Minutes

August 8 and 9, 2002

Page 3 of 23

headquarters are located in Walla Walla. Entertainment Developers NW, LLC, owner membership consists of Rocky R. Porter with 50 percent of the membership shares, and Patrick J. Jutz with 50 of the membership shares. There are no other licenses or pending licensures for HBCR's at this time.

Special agents from the Financial Investigations Unit conducted a criminal and personal history background investigation on all substantial interest holders and initiated and completed a financial investigation on both the LLC and personal membership finances. No disqualifying information was found. Special Agents from the Field Operations Division completed an onsite preoperational review and evaluation (PORE) in accordance with the rules of the Commission. The applicant was found to be in compliance with the rules of the Commission.

Based upon the licensing investigation and the PORE, staff recommends Entertainment Developers NW, LLC, d/b/a/ Blue Mountain Tavern be licensed as a house-banked public card room and be authorized to operate up to five tables. **Ricky Jutz** from the organization was present.

Commissioner Ludwig commented that he often thought Walla Walla would be a good location for a house-banked card room except for the fact that they are close to Wild Horse. **Mr. Jutz** agreed. Commissioner Ludwig asked if they had their own local clientele. Mr. Jutz said they have been running a Class F Poker game for a couple of years that has been well received. When asked when they planned to open, Mr. Jutz responded that they planned to open as soon as they were approved.

Commissioner Ludwig made a motion seconded by **Commissioner McLaughlin** to approve Entertainment Developers NW, LLC, d/b/a/Blue Mountain Tavern to be licensed as a house-banked public card room authorized to operate up to five tables. *Vote taken; the motion passed with five aye votes.*

House-Banked Card Room Statistical Monthly Report:

Derry Fries, Assistant Director, reported there are 74 licensed house-banked card rooms in the state of Washington and noted the following:

- Club Fiji in Everett, and the Habana Café and Casino in Tacoma are not in operation;
- Currently, there are 11 house-banked card room applications pending; and,
- Two tribal casinos were added for the Puyallup Tribe

5. Group IV Qualification Review:

Bingo for Kids' Causes, Renton:

Deputy Director Bob Berg reminded the Commission of the process changes that have been made and recalled that 18 months ago, staff began working with licensees through the study groups to develop new rules. Staff had a bit of a conundrum because part of the rules called for staff to bring forward qualification reviews, and at the same time, the Administrative Procedures Act required staff to make certain moves against licenses on occasion for violations of the rules. Presentations would be made to the Commissioners, and staff would stand up and say they couldn't talk about some aspects of the issue because the Commissioners may be hearing that in their role as an appellate body to an APA decision. With that proviso, staff began the process of taking another look as to how they might facilitate qualification reviews. From that rule, a rules package was developed, presented to the study groups, and passed by the Commission approximately three or four months ago. Today, the Commission is seeing the first qualification review under the new format and under the new approved rules. The report looks a bit different; it's shorter, but it provides the Commissioners with comparative data so when they look at the data, for example, on Bingo and Operations, they will find a comparison against similarly-classed licensees in the area and statewide, which gives overall information as to how they're doing relative to those that conduct a similar business. Staff will also provide a quarterly report that lists all of the Bingo operations in the state. The goal was to bring forward reviews to the Commission that was not under the auspices of any Administrative Procedure Act staff might be developing. Reviews will not be brought before the Commission unless there are no administrative issues that might lead to a statement of charges. Secondly, the Commission will be reviewing organizations on a three-year basis instead of an annual basis; however, staff will still do their regulatory work on an annual basis. Licensees are then given an opportunity to talk to the Commission about what it is that they do.

Mr. Berg reported today's review on Bingo for Kids' Causes is for the period ending December 31, 2001. The organization was formed in 1973 and has been licensed by the Commission since 1978. Their main goal is to support nonprofit children's service organizations. They possess a Class J Bingo license and a Class M Pull-tab license. Staff

investigated the organization to deem that they are qualified and found that they have made significant progress towards their stated purposes as a nonprofit, and that they are qualified to operate under the Commission rules as a nonprofit organization. Staff's recommendation is to certify them as authorized to conduct gambling activities in the state of Washington as a charitable organization. The organization has made a great deal of progress since 1999. In 1999 they returned about \$5,700 in direct and indirect services to their charitable purpose. In 2000, that number rose to \$33,600 and for 2001, they returned over \$121,000 to their charitable purpose. They are currently ranked number 10 statewide as a Bingo nonprofit operator. Executive Director Debbie Scott, and Bingo Manager Nancy Chaffner asked to make a short presentation after Commission consideration.

Commissioner Parker noted the organization showed a net gambling income of \$245,405 in December 2001. **Mr. Berg** affirmed saying the remainder, about \$126,500 was in supporting services, which was for the administrative operation of the nonprofit organization, and they retained some money in a reserve of sorts. They were \$6,000 over the minimum cash flow for the last quarter of last year and they were \$60,000 over the minimum cash flow by Commission rules for the first quarter of 2001. Commissioner Parker compared their operating expense to the statewide average— noting they are significantly above the statewide average in operating expense. He inquired why. Mr. Berg said he didn't know why, it could possibly be related to prevailing wages and what it takes to conduct business in King County versus what it might take to conduct business in some other county. Their gross receipts put them at number 10 statewide, so although their expenses are higher, from a regulatory perspective under Commission rules, they are well within the regulatory compliance.

Debbie Scott, Executive Director and Bingo Manager, provided a brief presentation. In 1973, when they were first formed, they were called Puget Sound Big Sisters and they operated a program to match women and young girls in one-to-one mentoring relationships. The program grew, and at that point they outgrew their service and changed their name to Big Sisters of King County. In 1994, they moved their Bingo game to its present location on the Maple Valley Highway in Renton. At the same time they moved their game, there was a decline overall in the industry, and times were bad for Big Sisters. They cut programs, laid off employees, and took pay cuts. The board of directors decided that it would be easier to get outside funding if they weren't based on one gender. Big Brothers and Big Sisters merged their programs and became Big Brothers/Big Sisters of King and Pierce Counties. That left them without a direct program. In 1999 when plans were formalized, they became Bingo for Kids' Causes and were designed to give money to other nonprofit child-serving agencies, which is how they now operate.

Bingo for Kids' Causes raises funds for their membership. Those funds are distributed through a grant process and also through a year-end distribution. The first year the distributions were poor. In 2001, things began to look up and they began giving modest grants. Some examples of the funding are:

- A donation to Renton Area Youth and Family Services for direct services such as food, housing, and utilities for families in crisis;
- Provide display boards for the purpose of recruiting mentors for the Communities and Schools of Renton;
- Provide computer equipment and money to CAYA to paint a mural;
- Provide an air conditioner for Auburn Youth Resources to make their rooms more bearable for children who were in therapy; and,
- Donate laptop computers and Gameboys to King County Sexual Resource Centers to help with the efficiency for the caseworkers and to alleviate some of the anxiety for the children awaiting trial.

During the last half of the year they were able to grant more substantial requests: a \$10,000 matching request to Big Brothers/Big Sisters to fund drop boxes for their donation center, \$15,000 to purchase a used van for a campfire boys and girls, and they donated \$35,000 to Children's Therapy Center of Kent to remodel their therapy rooms.

Ms. Scott reported their future has been measured in six-month increments, and while their board is not accustomed to looking at the future, it looks like they will be able to continue for the time being. The board members are looking forward to making grant decisions instead of deciding how much longer they are going to try to keep the organization going. Future plans include larger and more frequent grant request fulfillments.

Commissioner McLaughlin made a motion seconded by **Commissioner Parker** to certify Bingo for Kids' Causes to conduct gambling activities in the State of Washington as a charitable organization. *The motion passed with five votes.*

6. Default Hearing – Card Room Employee License Revocation:

Daniel Sim, Silver Dollar Casino, Mountlake Terrace:

Amy Patjens, Manager, Communications & Legal Department reported that staff is requesting a default order be entered against Daniel Sim, an employee who allegedly stole \$20 from another dealer while working at Kenmore Lanes Casino in Kenmore. He was cashing out his tips at the cashier's cage, the dealer before him accidentally left a \$20 bill on the counter, which Mr. Sim picked up, and made no effort to return to the other dealer who was still in the area.

On May 31, 2002, a Notice of Administrative Charges and Opportunity for Adjudicative Hearing was issued to the licensee. Charges were sent to him by regular and certified mail. The charges that were sent by certified mail were returned, but the charges that were sent by regular mail were not. Staff tried to call Mr. Sim two different times and was not able to reach him. They also tried to contact him through his employer at the that time, Silver Dollar Casino, and found that after his employer received a courtesy copy of the charges, they terminated Mr. Sim's employment.

By not responding to the charges, Mr. Sim's has waived his right to a hearing and staff is requesting that a default order be entered revoking Mr. Sim's card room employee license. There were no questions and Mr. Sims was not present.

Commissioner Parker made a motion seconded by Commissioner Ludwig to enter a default order to Daniel Sims. Vote taken; the motion passed with five aye votes. **Chair Orr** called for a 10-minute recess at 2:35 p.m.

7. Vote on Tribal/State Compacts:

Confederated Tribes of the Colville Reservation:

Director Day reported that there are some significant differences in these compacts than the Commissioners have seen in the past, and provided a PowerPoint presentation to summarize those differences. Director Day explained that the Indian Gaming Regulatory Act of 1988 (IGRA) provides for:

- Class I gaming. The traditional forms of gaming solely under the jurisdiction of the tribe.
- Class II gaming. Bingo, Pull Tabs and non-house-banked card rooms.
- Class III gaming is essentially all other forms of gambling that are not Class I or II, and the jurisdiction is much more complex. Before there can be Class III gaming, there must be a compact with the state, and there is a joint regulatory environment between the state and the tribe. The Secretary of Interior must approve the compacts and the National Indian Gaming Commission has a limited role in that area.

Director Day emphasized that Indian casino operations with gaming activities within Indian country, in effect, have triple regulation. They are required to have a full regulatory operation directly responsible for regulatory affairs as it pertains to the casino operation that operates under the compact. They also have the joint regulatory effort from the state, and federal involvement from the NIGC. They pay three regulatory fees and they have three regulatory operations in an oversight position.

Where Class III Gaming Can Occur. The games are traditionally Blackjack, Baccarat, and all the traditional Class III games. Gaming can occur (in Pre-October 17, 1988 lines) within the limits of the reservation or on lands that are held for trust by the tribe or by a tribal member. Post-October 17, 1988, land acquisitions are within or contiguous to the reservation or other trust lands if approved by the Secretary of the Interior.

Director Day explained the Washington State Tribal Gaming Compact Process:

- There are particular public protection interests. It is a respect-based partnership. It has no regulatory involvement—again, trying to keep the criminal element out of gambling, to ensure that it's conducted fairly and honestly, and limited to the authorized activities, minimizing any negative impact to the local area on law enforcement services, and emergency services. This is a joint interest that the Commission has with the tribes.
- The approval process is through compact negotiation by the Gambling Commission. The compact is submitted to the Commission. Senator Prentice and Representative Conway conducted a joint hearing regarding the compacts that are before the Commission today. The Legislature had 30 days to review the material, and the Commission has 45 days to hold hearings, which are taking place at this time. The compacts are now before the Commission for their consideration, and if approved they will be forwarded to the Governor, or returned to the Director for further negotiations. The Governor has the final review and execution authority, at which time the compact is forwarded to

the Secretary of Interior for publication and approval.

Secretarial Procedures - **Director Day** noted the Colville Compact was not negotiated under the normal processes. Previously, there had been an attempt to negotiate a compact with the Colville Tribe and that effort failed. There is a very long story, however, the Secretarial Procedure is actually a product—a mediation that is not traditional. In the case that is before the Commission today, the Colville Tribes did request mediation under new rules from the Secretary of Interior. In June 2000, the Governor and the Attorney General agreed that the state would participate. The difference in this process is the negotiations under those procedures were actually with the tribe, and in effect, the Governor and the Attorney General, and their representatives directly, as opposed to the previous process with the Commission. The agreement was that if a tentative agreement could be agreed to in this process, it would then be forwarded as an approved compact. What started out as a compact that failed to actually gain final approval, then went into the mediation process under the secretarial procedures, and is essentially now back before the Commission as a traditional state compact. The tentative agreement that is before the Commission today was reached in June of 2002. This was no small effort and Director Day acknowledged the substantial efforts and the willingness of both governments to find common ground in order to bring forth the compact for the Commission's consideration.

Existing Compacts. **Director Day** noted the first compact was entered into in August 1991. After today, if approved, the state will have compacts with 27 of the 29 recognized tribes that are currently operating 18 tribal casinos.

Jurisdiction/Regulation. There are joint jurisdictions of regulation. This was brought forward in a concept that the tribal gaming agencies have the primary responsibility for regulation, and that the Commission works in a partnership with those agencies. We license individuals and companies, but the state certifies and the tribe licenses. **Director Day** noted the tribal gaming agency and the state gaming agency monitor, enforce, and investigate player complaints. The state is reimbursed for its costs, and the state reimbursement comes from two directions—certification fees and onsite regulatory effort.

Director Day identified the location of compacted tribal facilities. He pointed out the casinos that are currently in existence and those that are planned and very likely will come forward in this biennium. He also addressed the growth in the number of machines that have been added, totaling over 9,000 machines.

Director Day highlighted the proposed compact for the Confederated Tribes of the Colville Reservations:

- A significant difference is that the tribe may operate three facilities, but they must be located at least 25 miles from each other. After three years, the tribes may establish three additional satellite casinos, all within the 25-mile restriction;
- 50 gaming stations per facility maximum; 16 per satellite casino;
- Identifies the approved devices that can be operated as a current tribal lottery system (TLS) or other electronic gaming device (EGD), which still meets the general requirements of the “friendly lawsuit” and specific approval requirements. In the event there is a machine that basically meets the same requirements under which the TLS was developed, it would also have the potential to be legal under this compact;
- 675 electronic devices is the maximum number EDGs allocated to the tribe. Beyond 675 machines, they must lease from other tribes. The maximum number of EDG's is 4800, which is based on the number of facilities, and this is different with no more than 2000 at any one facility. Right now that number is 1,500 - so that is a significant difference in the Colville Compact. They may have no more than 100 in a satellite casino;
- There is a \$500 wagering limit;
- They may operate 156 hours per week, with the ability to operate 160 per week three times per year;
- The state will not certify card room supplies. The state will certify manufacturers and supplies, as it does with the other tribes. The state will, however, conduct criminal background investigations and be in a position, through notification, that a particular potential employee is ineligible and will not be licensed by the tribes;
- Impact mitigation is different with the Colville Tribes. It's two percent of all Class III activities as opposed to the other compacts that separate TLS and other Class III activities. There is no committee in this case, it is a direct distribution. Requests for impact funds are made to the tribe and, instead of having a third party and having the Gambling Commission involved, it directs disputes back to the mediation process outlined in the compact.

Director Day addressed the Colville effective date/transition consideration, and noted that because the Colville's have been operating three casinos, a transition plan needs to be implemented on how to move from that environment to the compacted regulatory process. The compact contains a provision designed to move that transition along smoothly while protecting the interests of the tribes, the state, and the employees. The compacts cannot be effective while machines are in operation that in the view of the state and the compact, are not appropriate. On the other hand, we also want to mitigate any impacts to the economy and to the employees of operating casinos. Basically, the tribal chair will certify that only approved devices are operating and that both parties agree that the facilities are in compliance and meet all terms of the compact. When that certification is made, then the compacts will become effective. Although the compacts are approved, it won't actually go into effect until the certification is received. During the period between the signing of the compact and its effective date, the state and the tribe will work closely to prepare for an orderly transition.

Chair Joe Pakootas, Chairman for the Colville Tribe introduced himself. **Commissioner McLaughlin** asked about the proposed timeline for the new compacted facility. Chair Pakootas advised they don't know exactly how long the transition period would take because they are presently in three facilities, and with the new machines and the new technology, they aren't sure how long it will take to remodel, rebuild or even construct new facilities. He did not expect it to be this year. **Commissioner Ludwig** asked if their three existing locations were 25 miles apart. Chairman Pakootas affirmed, and noted they are the sites that are proposed for the permanent facilities.

Representative Wood addressed a question that came up in the joint hearing of the Legislature regarding the concept of satellite locations that caused some concern. This was allowed specifically for this compact, but under some other precedents, the question was, what would prevent other compacted tribes from requesting satellite locations. **Jerry Ackerman**, Assistant Attorney General, responded that the compact, like all of the other compacts, contains a most favored nation clause. In the simplest terms, it provides that if one tribe negotiates a better deal than in another compact, that "better deal" also would be afforded to tribes that have the current compact. Another tribe that has a compact could amend their compact to have the provisions of the Colville Compact included in theirs, but they must be able to meet all the conditions. One of the key conditions here is that the facilities shall be at least 25 miles apart. Very few of the tribes in the state of Washington have that much land mass to meet that condition. However, if they could, they would be entitled to the same provisions that the Colville Tribe negotiated. **Commissioner Parker** asked Mr. Ackerman if it were theoretically possible that a tribe might acquire land in the future that meets those conditions. Mr. Ackerman responded that if a tribe could acquire land that was eligible under the Indian Gaming Regulatory Act, and if it enabled them to meet the 25-mile restrictions, then he didn't believe they would be prohibited from applying to have an additional facility. The key would be that they would have to go through the IGRA process and be able to acquire the land in the manner that that federal law indicates.

Chair Pokootas commented that this is the second time the Colville Tribe has been through this process. Former Director, Frank Miller was the chief negotiator for the state when they first started negotiating in the late '80s. The negotiations started again in late 2000, and the Colville Business Council approved the negotiated compact in June of 2002. It wasn't unanimous, but they approved by a majority vote. He provided some background history for the benefit of the audience's understanding. Chair Pokootas noted the Commission staff that negotiated with the tribe were tough but conscientious of the tribe's efforts and their concerns, and they did a great job. He commended the Commission staff for a job well done. Chair Pokootas asked the Commission to consider approving their compact. He acknowledged that it is different from some of the other compacts that have been negotiated with the tribes in this state. However, the Colville Tribes are unique in that they live on the east side and don't have the traffic and population that the west side has. Chair Pokootas expressed appreciation for the Commission's time and consideration of this application.

Chair Orr asked Mr. Pokootas to introduce his delegation. **Chair Pokootas** introduced the following: Council Members Harvey Moses, Jr., John Stanskar, Mike Marshan, Jr., Lucille Pokootas, Joanne Leath, Shirley Tarley, Ruth Green, Legal Counsel, Red Bellis, Legal Counsel, Counsel Members Margie Hutchinson, Dean Joseph, and Colleen Costin, former Chairperson of the Colville Business Council.

Senator Prentice made a motion seconded by **Senator Winsley** that the Gambling Commission recommends approval of the proposed Compact for the Confederated Tribes of the Colville Reservation and the Gambling Commission. **Chair Orr** explained to the audience that ex officio members were allowed to make motions and vote on tribal compacts.

Commissioner Ludwig commented that he was still anxious about the effective date, however, the tribes have come a long way, and it has been a long road, and he expressed his intent to support this compact. Commissioner Ludwig was

pleased that the Colville Nation and the state would have a compact in effect. Vote taken; motion passed unanimously.

Vote on Tribal/State Compacts:

Shoalwater Bay Indian Tribe:

Director Day highlighted the Shoalwater Bay potential compact agreement. He summarized that the compact before the Commission, and under consideration, is very similar to the other compacts that the Commission has previously reviewed and approved. There was one change in the wording on page eight. Essentially, the version said, ensure the enforcement of all “relevant” laws, and it should have said “applicable” laws. The original compact actually had the term “applicable,” and when translating and signing the new compacts, the word, “relevant” was used. The original term will be inserted; which does not change the meaning.

Bruce Tower, Legal Representative for the Shoalwater Bay Indian Tribe introduced the following representatives: Chairman Carl Sunny Johnson, Jim Anderson, Tribal Attorney and Dave Lungren. He asked if there were questions.

Commissioner McLaughlin asked for the effective date for opening the new compacted facility. Mr. Tower responded that the Shoalwater circumstances are a bit different than the Colville's. They foresee opening before the end of this year.

Senator Prentice asked the two tribal members to come forward for questions about the background of the tribe. She inquired about the size of the reservation, and was advised the reservation was one square mile. Senator Prentice asked how many tribal members there were, and was told there were a total of 237 members, and their casino employed 40 employees. Senator Prentice commented that they are obviously not going to have the problem of the 25-mile limit, and emphasized that it was a point worth making because the acquisition of land, even for the larger tribes, is not that easy. Generally County Commissioners resist taking land off of the taxpaying roles, and she believed this is something the Commission didn't really need to worry about.

Representative Wood made a motion seconded by **Commissioner McLaughlin** to approve the proposed compact for the Shoalwater Bay Indian Tribe.

Senator Prentice, pointed out that Bruce Tower played a pivotal role in this matter, and that she was impressed by the dignity of these proceedings; he was always there, and always available, and she wanted to acknowledge that point.

Commissioner Ludwig said he was pleased that they are able to meet together and come to an agreement. He hoped everything worked out well. Vote taken; the motion passed unanimously. **Chairman Sonny Carl Jr.** thanked the Commission.

Vote on Tribal/State Compacts:

Quinault Indian Nation:

Director Day noted the Quinault compact is an existing compact, and only amendments are before the Commission today. He summarized the changes:

- The number of possible facilities goes from 1 to 2. Both must be on trust land within or contiguous to the reservation, or at the current casino site.
- The number of gaming stations has increased from 50 to 75 up to 125.
- The tribe must lease the rights to gaming stations from other compacted tribes when their total number of gaming stations exceeds 60.
- The hours of operation are the same as other compacts—156 and 160.
- The health and safety responsibilities and community contribution requirements are clarified.
- A rearranging of the order to clarify the responsibilities of the tribal gaming agency and the tribe.
- The renegotiation options were simplified to enable a more direct process.

Rachel Drake, Legal Representative, introduced the President of the Quinault Indian Nation, Pearl Capoeman-Baller, Joe O'Neil, CEO of the Quinault Nation, and Barbara Smith, Executive Director of the Ocean Shores Chamber of Commerce. Ms. Drake addressed the significant provisions in the amendments. With the expanded gaming hours, the Nation can operate the current gaming facility up to 24 hours a day four days a week, which will provide increased flexibility to the casino, and will enable the nation to offer its patrons the increased gaming opportunities they are

WSGC Meeting, Ocean Shores

Minutes

August 8 and 9, 2002

Page 9 of 23

seeking. The ability to open a second gaming facility provides great hope for the future generations of the Nation and will enable them to contribute to the future success of the Nation and its neighboring communities. On behalf of the Nation, she thanked the Commission for their consideration.

Pearl Capoeman-Baller greeted the Commission and said she had given a lot of thought to the meaning and value of the proposed amendments. She noted the implications of the decision today are far reaching into the future of the Quinault Indian Nation. The Quinault people believe firmly that they need to support their elders and their youth, and that the future belongs to their youth, and those yet to be born. In that regard, she felt compelled to give their youth a voice in today's decision. That voice is represented by two youths—David Montgomery soon to be a junior in High School, and Toodie James, a freshman in High School, just crowned Ms. Teen Quinault. Ms. Capoeman-Baller thanked the Commission and staff for their hard work, commitment, and recognition of the importance of the unique relationship between the state and the tribes. She hoped they would all work together to preserve and protect the Nation's ability to continue to meet the needs of their government, their people, and the communities they share.

Toodie James and **David Montgomery** provided brief tribal historical information and ended their presentations by asking the Commissioners to make a positive decision to help the Quinault Nation achieve their dream of continuing on the road of prosperity and to help preserve this lifesaving business for tribes. **Chair Orr** complimented the two youth speakers for their presentations.

Senator Winsley made a motion seconded by **Commissioner Ludwig** to approve the Quinault Nation compact amendments as presented. *Vote taken; the motion passed unanimously.*

Chair Orr called for a recess at 4:10 p.m. and recalled the meeting at 4:25.

8. Government-to-Government Discussion: **Chair Orr** invited tribal leaders forward for questions and responses.

Hiram Olney, Yakama Tribal Gaming Commission, addressed the talk about "leveling the playing field" and noted the Yakama Tribe is pretty big—they have close to 10,000 members. There is a favored nation clause in their compact and they have been getting pressure from their membership to have satellite casinos. He asked if they would have to renegotiate their compact again to do this. **Jerry Ackerman**, Assistant Attorney General, advised that he could not remember whether or not the Yakama Compact is self-executing—whether or not an amendment to the Compact is necessary to incorporate the terms of any provision. His hunch was they would need to rewrite the relevant part of the Compact if it is appropriate to do. He reminded everyone that there are still a couple steps left in this process before there is an official compact. The agreement the Commission is recommending to the Governor still has to be signed both by the Governor and by the Tribe, and then the Secretary of the Interior has to approve and publish the Compact.

Mr. Olney addressed the Muckleshoot Compact, allowing more than one site. **Mr. Ackerman** responded that if there were any other compacts that had provisions that Mr. Olney thought would be more advantageous than what is in the Quinault Compact, then they would need to take a look at it and see whether or not it needs to be specifically incorporated, or if their compact will pick it up automatically. He suspected it would require some drafting.

Commissioner Parker explained that one of the Commission's goals was to set aside time at this meeting so they could reach a better understanding of who the tribal Commissioners are, what their assignments are, and how they operate. He noted Commission staff obviously works with each tribal Commission, but he was hoping to address questions with the tribal member Commissioners in order to have some public discussion. For example, as a member of the Yakama Nation Tribal Gaming Commission, does assignment as a Commissioner include the representation of the tribe in its negotiation over these kind compact issues with the state. **Mr. Olney** responded that the Yakamas have a Tribal Council and a General Council, which includes all members over 18 years of age. The General Council meets in an unorganized meeting and they put mandates on the Tribal Council. The Tribal Gaming Commission was given the job of building the casino and going out and finding money. Then, they moved over to being Commissioners and couldn't be involved in management any longer.

Commissioner Parker said that helped him understand. He continued on a different point, noting that each tribe is its own nation; and has the prerogative of setting its own rules and so on. In the case of the Yakama Nation, he inquired how the gaming Commissioners were appointed. **Mr. Olney** said the first time they are appointed, the General Council Chairman and the Vice Chairman, picked four people from applications and presented them to the General Council who

ratified them. Last fall, they took a list of all those who had applied, they had 25 people, and the General Counsel made its own rules. Commissioner Parker thanked Mr. Olney for his explanation, saying it helped him better understand Mr. Olney's relationship.

Art George, Chairman of the Nooksack Indian Tribe, and President of the Washington Indian Gaming Association, thanked the Commission for the opportunity to address some of the Nooksack's concerns as follows:

- The recent transfer of funds from WSGC coffers to the State's General Fund is unacceptable. Tribes have paid significant sums of money to the Commission for a degree of regulation that has proved unnecessary. Anticipated problems related to tribal gaming and their associated costs simply haven't materialized; therefore, the Commission should return unused funds, which have been confiscated by the state, to the tribes who paid them.
- The recent move to arm all state gaming enforcement agents is ill conceived and ultimately harmful to tribal gaming. He advised that while it may be advisable to arm a few agents, it is inappropriate to supply weapons to auditors and other agents not charged with protecting the property. They strongly disagree that a criminal element exists and warrants the presence of armed agents, and such a presence sends a wrong message both to customers and to casino employees.
- They are commissioned to allow tribal regulatory bodies to participate in the state's gaming lab. The TGA should be included in the process to review and approve tribal lottery system games and to prohibit them from doing so contradicts established provisions for joint gaming regulation between the state and tribes.
- Currently, a state lottery system takes payments via bill acceptors—credit card transaction and electronic debits, yet TLS operators are not authorized to do the same in accordance with the agreement supported by IGRA and the friendly lawsuit in Washington State. Parity on this issue should be established and tribes should be given access to these forms of payment.

Turning to a more positive note, **Chair George** noted the Commission has been helpful with the following: the TGA audit training, the new website, and agents' willingness to review the visits with TGA agents before they leave. However, they thought it would also be helpful if quarterly meetings could be arranged with area TGA supervisors. Chair George urged the Commission to keep sight of significant issues in the marketplace that affect everyone. He noted that everyone competes for in state and out-of-state entertainment dollars, and in order to do so effectively, we must have fresh, competitive and stimulating products that offer a high level of entertainment value. He believed that not only is the Commission responsible for regulating a state gaming industry, it is also responsible for ensuring the industry's overall health. He believed that a healthy industry would help prevent people from looking for ways to circumvent regulation and offer creative benefits to the communities it serves. He thanked the Commission for allowing him to participate and asked them to keep up the good work. **Commissioner Parker** thanked Chairman Art George for taking the time to prepare his comments. He questioned the concern on the tribal gaming authorities being involved more specifically in the determination of the kind of games allowable. **Chair George** responded that right now, they have no involvement in any of those determinations, and the tribes feel the Commission should ask for some tribal representatives, and that they should have tribal representatives in the Legislature, which would go a long way in creating a better atmosphere between the Commission and the tribes.

Ed Fleisher, Special Assistant, explained the approval process is set out in Appendix X, and the manufacturers normally bring the games forward. The approval process is a relatively technical process—which goes through Gaming Laboratory Incorporated, a company that was chosen by the tribes jointly with the Gambling Commission.

Commissioner Parker noted the Washington Indian Gaming Association (WIGA) exists as an organization of tribes in their capacity as tribal governments. He asked if there had been any discussion about the interest of the tribal gaming commissioners creating some kind of an organization, or an association, or a way in which they might be able to get together and share common concerns and interests. **Chair George** believed that is possible because they all do share the same concerns, however, each tribe is autonomous and they can't say what the other tribes can and cannot do, but they can make suggestions to each other. Commissioner Parker said he was just trying to get a clear picture and wasn't advocating a particular action. He was curious if there was an interest, specifically because of the fact that the gaming commissions are intended to be an independent entity in order not to compromise their essential role of being a self regulatory arm of the tribal government. In that capacity, Commissioner Parker thought that there has got to be some kind of distinct relationship between the commissions as independent arms versus management, for example, which is in many ways indistinguishable from the tribal government. Management does have an independent role, but in terms of the interests of the tribe in its gaming enterprise, there's a coming together of the roles.

Chair Orr addressed Chair George's complaint about the transfer of monies to the General Fund and noted the Commission has been having serious debates, and that a hearing was scheduled for the next week, to be chaired by Senator Prentice. He felt it was extremely important that they continue to talk, and that the tribes continue to explain to the Commission what the tribe's needs are, how they are going to accomplish those needs, or why they cannot. He suggested that the items presented by Chair George should be put in a letter to Director Day. He said he didn't know if there was anything the Commission could do about the various items, but they needed the list in front of them in order to try. **Chair George** said they had planned to do so.

Ron Allen, Chairman for the Jamestown S'Klallam, noted that when we talk government-to-government, he believed there is a whole lot of education that is essential. Government-to-government, to him, means his counterpart is the Governor. His council is counterpart to the Legislature, and they have organizations and structures similar to Washington State with regard to the different Commissions and different structures. Because they are a small government, they have to deal in government-to-government structures, in order to get things done as it affects their community. Chair Allen addressed the following points:

- When addressing how they are structured in terms of protecting the interests of the tribe, the public interest, the assets of the tribe, they hire management to run their casinos. Their job is to assure the protection and best use of those resources. They establish an independent Commission to assure compliance. They're not there to protect the assets; they're there to assure compliance with regard to how they manage the gaming operation. Whatever commitments they have made with the Commission and whatever obligations they have through IGRA, their job is to regulate and they believe they are doing a great job. However, they need to try to work differences out with regard to the issue of providing appropriate oversight of gaming activities in Washington State, including how it applies to Indian reservations.
- Chair Allen objected to authorizing guns for special agents. He believed it was inappropriate and sends the wrong message to the public. Their own agents in security don't carry guns—because they don't need them.
- He also addressed the process of approving machines. They do negotiate with the companies who make the machines so they comply with the criteria in Appendix X. The issue is that they have agreed to use GLI. The tribes have paid for a lab. They hire qualified and independent experts, but then there is a second tier that second-guesses their opinion. The tribes are not a part of that process. If they have a problem in terms of getting the machines through this two-tier process, then it makes the process more challenging. Chair Allen questioned if it is appropriate to pay for GLI services, and then be required to go through an additional lab process, and whether the tribes should be a part of that process with the Commission. He asked if the tribe even has an opportunity to challenge the agency with regard to the policy call in terms of how the agency will carry out its responsibility as it affects the tribe. He suggested creating a hybrid of a structure between them, if they are government-to-government, to revisit how that process moves forward.
- Chair Allen questioned how far the agency should go with regard to its licensing authority. For example, he received a report from his management that they wanted to purchase tabletops for Blackjack. They had trouble getting them because the people who make the felt weren't licensed in Washington State. This is a common sense factor that he hoped the Commission would consider thinking about.
- Chair Allen questioned how much of a role the Gambling Agency should play versus the tribe's role as a primary regulator. If we hope to develop confidence between the two entities, then there needs to be an offset balance. When he gets their budget reports, he reviews how well the casino is doing, and he requires his staff to inform him how much he is paying out in regulatory fees. He asks that it be broken out—how much to the state, how much for their own regulatory operation, and how much to the federal government. That number is growing, which causes him concern because at some point in time it needs to level off, especially if the operation is leveling off.
- Chair Allen addressed the most favored nation comment—if one tribe is doing it, another tribe should be able to do it, and the process to make adjustments should be fairly straightforward. But, it's the day-to-day operations they need to be watchful of, because that's how they need to improve relationships and keep tensions down.

Commissioner Ludwig asked if the Commission regulates and requires a license by a felt manufacturer. **Director Day** affirmed requiring licenses for those that produce gambling-related equipment and/or supplies. Commissioner Ludwig expressed concerns about the displaying of a firearm to an auditor anywhere in the state of Washington and asked Chairman George to clarify his comments. **Chairman George** explained that the statements were made at the beginning, when casinos were first proposed on Indian lands, and everyone was afraid of the social evils that may come as a result of that. He pointed out that none of those social ills had resulted and when he now hears rumors of guns being

used, he is concerned about the impression this has on the public. **Deputy Director Berg** pointed out that Commission agents have been armed since 1975. The recent discussion about weapons was to clarify when the agent must carry a weapon and when they may not. He did not want to leave the false impression that they were just now arming Commission agents in 2002.

Commissioner Niemi commented that it is important to provide a written statement of concerns when they arise. She emphasized that the Gambling Commission would look into the issue and respond to the concerns. She suggested that unless there was something generally that the Commission was doing that was off the track, write a letter, and provide the specifics of the concern.

Commissioner Ludwig thanked Chairman George for his comments and those of the other speakers. He affirmed it keeps the Commission aware and on their toes. **Commissioner Parker** asked Ron Allen if he was affiliated with the First American Education Fund. **Mr. Allen** affirmed. Commissioner Parker commented for the record that it was an excellent report.

Shirley Charlie, Counsel for the Confederated Tribes of Colville, thanked Mr. Fleisher, Ms. Froud, Mr. Ackerman, and the Commission for approving their compact. Although there were some trying moments, they worked very hard. She emphasized that no one regulates themselves more harshly than their own tribal members. She said she was confused about the state's regulatory role, and the same is probably true for state regulators—they cannot understand the tribal regulator's issues unless they come to the various tribes and listen and learn.

Art Jones, Colville Tribe, spoke in reference to government-to-government relations, commenting that decision makers should be talking with the other decision makers. He noted the Commissioners are the decision makers and he believed the negotiations process probably would have taken half the time if the Commissioners had been sitting at the table. He also reported that in 1997 or 1998, there was a tribal economic study done throughout the state. He noted that combined, the tribes contributed approximately a billion dollars to the state's economy. The Colville Confederated Tribes were in the \$200 million annual bracket, and they are the largest employers in north central Washington. He inquired about the justification for limiting tribes to 675 machines per facility. **Mr. Ackerman**, Assistant Attorney General, pointed out with regard to the Colville negotiations, the 675 number and whether that cap would rise, was one of the very last things they had to resolve through negotiations. The Colville proposal on that number was taken to the Governor's Office, and the tribe received a letter from the Governor specifically with regard to that issue. That decision was made at the highest level and the Commission was kept apprised of the Governor's position. **Commissioner McLaughlin** informed Mr. Jones that she was the Chair at that time, and her understanding of the purpose for limiting to 675 machines was so that if tribes wanted more machines, they would have to go to the smaller tribes and get their allotment so that all the tribes were helped, not just the ones on the I-5 Corridor. Mr. Jones thanked Commissioner McLaughlin for her insight and said he looked forward to working with the Commission.

Chris Richardson, Secretary, Confederated Tribes of the Chehalis Reservation, stated that the tribes take regulation just as seriously as the state does. He hoped this is not the last time that the Commission facilitates this type of open communications because there is a lot to learn—each tribe is different and distinct. In Oakville, there is an elected five-person body that represents the executive government (the business committee) and there is an independent body, which is the gambling commission. Just like this Commission, they enforce the regulations and they are independent to the extent that they don't interfere. Mr. Richardson addressed the firearms issue, commenting that while special agents may have had the right to carry a gun for many years, it's been a recent policy decision to start carrying those guns. He questioned what kind of regulators the Commission wanted. If agents are required to carry guns, he asked who would be eligible to be agents—it would be people from the law enforcement arena—it's not going to be an auditor; and, it's not going to be a computer programmer. Mr. Richardson thought maybe there isn't enough emphasis on people who can detect fraud.

Commissioner Ludwig asked Deputy Director Berg if he could tell him how many CPA special agents we have. **Mr. Berg** responded that he didn't know the exact number, but the agency has numerous certified fraud examiners and numerous CPAs, in the financial investigations unit, in the field operation's division, and in tribal gaming

Ron Charles, Chairman of the Port Gamble S'Klallam Tribe, said he was pleased to be here to talk with the Commission. He reported their casino has only been open six months and it is in a small market area, where gaming will

never be as big as it is for the larger tribes. However, it is nonetheless important to small tribes. When tribal councils look at the bottom line, they try to squeeze every nickel out of any revenues they have. They look closely at the expenses, and they wonder about regulation and about how much regulation is too much regulation. He hoped there would be future discussions on this issue. Mr. Charles then introduced Harry Fulton, Tribal Vice Chair and TGA Director, Leo Calan.

9. Other Business/General Discussion/Comments from the Public:

Gary Hanson, Executive Director, Washington State Council on Problem Gambling, thanked the Commission for their financial support for the Council's Help Line.

Executive Session To Discuss Pending Investigations, Tribal Negotiations & Litigation:

With no further business, Chair Orr recessed the meeting at 5:30 p.m., noting the Government-to-Government dinner would be hosted at the Quinault Beach Resort, commencing at 6:00 p.m.

**COMMISSION MEETING
FRIDAY, AUGUST 9, 2002
MINUTES**

Chair Orr called the meeting to order at 9:30 p.m., at the Shilo Inn located in Ocean Shores and welcomed the attendees.

MEMBERS PRESENT: **COMMISSIONER GEORGE ORR, CHAIR;
COMMISSIONER CURTIS LUDWIG, VICE CHAIR;
COMMISSIONER LIZ McLAUGHLIN;
COMMISSIONER ALAN PARKER;
COMMISSIONER JANICE NIEMI;
SENATOR MARGARITA PRENTICE;
REPRESENTATIVE ALEX WOOD.**

OTHERS PRESENT: **RICK DAY, Executive Director;
ROBERT BERG, Deputy Director, Operations;
ED FLEISHER, Special Assistant; Tribal & Government Affairs;
DERRY FRIES, Assistant Director, Licensing Operations;
CALLY CASS-HEALY, Assistant Director, Field Operations;
AMY PATJENS, Manager, Communications & Legal;
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant**

10. MINUTES – June 13 and 14, 2002:

Commissioner McLaughlin made a motion seconded by Commissioner Niemi to approve the Regular Meeting Minutes of June 13 and 14, 2002, as presented. *Vote taken; the motion passed with five votes.*

11. Staff Report:

2003-2005 Budget Presentation – Consideration for Adoption:

Rick Day briefly reviewed the June budget discussion for the 2003-2005 biennium. Director Day noted the budget will be about \$700,000 less than the budget the Commission approved for the previous biennium and it will be about \$1.3 million less than the allotments were for the last biennium. This proposal brings forward the reductions discussed in June, and it also addresses an increasing caseload relating to the maintenance-level increase in tribal gaming as new casinos come forward. The only new proposal in this budget accommodates increases in the insurance premiums for the state.

Director Day discussed estimated revenues, noting the Commission is required by statute to assess fees and to cover costs for licensing and enforcement. Staff estimated revenue at approximately \$28,545,000. The revenue side of the budget includes a fee increase for each of the successive years. The '03 and the '04 figure are already set by OFM and the '05 figure is an estimate. They are based on the maximum allowable under the I-601 increase. The Commission faces a fairly significant cash management issue in the way it can increase fees. The agency can't truly operate as a business, because if we have a more expensive year, we cannot simply raise the fees. If we decide against a fee increase, we have lost the ability to raise that revenue out of the base forever, and we don't have the ability to come back and recoup that for additional costs. The Tribal Gaming Unit, however, does generate a billing for its services and the

Commission is reimbursed for those services. **Director Day** identified that 69 percent of the revenue comes from license fees, and almost 21 percent from tribal gaming. The tribal gaming figure includes the regulatory fees and the license certification fees. Punchboards and pull-tabs are still the primary license fee funding sources. House-banked card rooms have increased steadily each year. Card room employees are projected to level out because it is anticipated that the majority will be renewing their licenses, which generates less revenue than a new card room license fee.

Director Day addressed the agency's decision packages. The first one is maintenance level—the things the Commission has to do to continue the current level of services. This is not a new proposal; it's to accommodate caseload growth. In this case, within the tribal regulation side, staff is asking for eight new positions that would provide for tribal regulatory services—one licensing staff and seven agents. If the Commission approves, agents would be hired as the casinos open.

Another decision package includes a reduction package. This addresses the reductions made in 2003 into 2005; reducing what had previously been approved for house-banked card rooms, and the (RIF) reduction positions brought about as a result of the agency reorganization. A \$25,000 per year adjustment was made for the Problem Gambling Contract.

Director Day advised there would be increases in this biennium. Adjustments were made for goods and services—(communication costs), lease increases, and then salaries and benefits. **Director Day** emphasized this is not a COLA increase; it includes step increases for classified staff, and the salary band increases that were incorporated in the special agent's pay plan, which are scheduled to routinely increase over the biennium. This package is essentially a requested reduction of \$2 million.

Director Day reported that our sole new proposal is an increase designed to accommodate the anticipated increase in the self-insurance plan. The insurance plan for 1999-2001 cost approximately \$53 million, and the 2003-2005 rate is anticipated at \$173 million. The Commission's share of the costs is about \$226,000 over the biennium, and that is an increase of \$168,000 from the June budget proposal.

Director Day noted that if approved, the proposed budget is \$1.3 million under what was previously allotted. He explained that we work with OFM and legislative staff to come to an agreement on the "carry forward" figure, which is the amount after withdrawing the one-time expenses, and, roughly doubling the 2003 allotment. The total proposed agency budget, if approved, supports 188.7 FTEs, at approximately \$129 million, over the biennium.

Commissioner McLaughlin asked why she would vote for a budget that comes out in the red. **Director Day** responded that the goal is to bring revenues and expenses into close proximity. The agency initiated some savings to the budget over the long term, and intends to bring those figures into balance. The net result we're trying to accomplish is by the end of this period, to have that gap closed entirely. Staff could have reconciled the amounts further, but left them at the estimated calculation. The \$43,000 shown in the red is simply a projection that when we get to 2005, there will be \$43,000 more in expenses than the revenues we bring in. However, the agency has money in the bank, so we can continue to provide the services required under the law. **Director Day** affirmed the question is whether the agency will be solvent when we get through all this, and the answer is yes.

Director Day addressed expenditures, noting that approximately 73 percent of the agency's expenses will be in salaries and benefits, which always makes budget reductions somewhat of a problem. **Director Day** anticipated adding staff in each successive year, and noted that no COLA has been projected in the biennium. He noted that OFM does not allow for inflation to be built into the agency's budget, however, if gas prices go up or if there is a COLA granted by the Legislature, we have to be prepared to make sure we have sufficient funds to pay for those expenses. After the withdrawals that have been made (at about \$6 million) and then adding back in the revenues, the ending balance is projected at about \$5.3 million which is a little over four months' working capital.

Director Day noted there has been a lot of discussion about why the agency needs to have a fund balance and he emphasized the need to anticipate unanticipated expenses (such as inflation and COLAs) and to make sure that we have a sufficient fund balance to cover potential expenditures such as leave liabilities or reduced revenues. The agency also experiences cash fluctuations from when the monies come in, and when the bills are due. That cycle can create about a \$1.2 million up and down cash fluctuation. Current workload changes also impact the budget. TGU is an example, as the anticipated casinos are added, they may come on faster than anticipated and the agency can't wait to react because it will take awhile before our agents are fully functional and in a position to recoup the revenues that the agency needs to compensate for the start-up costs. **Director Day** reported that we have substantially reduced the projected FTE growth

for house-banked card rooms because we're projecting a static growth pattern. However, there are some things—particularly legal actions pending between cities and various card room operators regarding ordinances that are restricting that level. If the ordinances are removed, that could very well result in the growth of additional card rooms, and the agency will have to be able to react and provide regulatory services. Director Day emphasized the Commission, as an agency, has to be able to be prepared to respond and be able to operate in different directions depending upon the dictates of the market. Director Day closed his budget presentation and asked the Commission to consider approval of the proposed agency budget as presented. **Chair Orr** asked for questions or comments.

Commissioner Ludwig made a motion seconded by **Commissioner Niemi** to approve the 2003-2005 budget as presented. **Commissioner McLaughlin** commented that she would probably vote for it, but it was against her Swedish blood to vote for a budget in the red. **Chair Orr** said he appreciated Commissioner McLaughlin's concern and point of view. He called for public comments; there were none. *Vote taken; the motion passed unanimously.*

RULES UP FOR FINAL ACTION

12. Petition for Rule Change from Sherry Gillard regarding player-supported jackpots:

WAC 230-40-610:

Cally Cass-Healy, Assistant Director, reported that the petitioner, Ms. Sherry Gillard, is a licensed card room employee and Poker player and is requesting an amendment to WAC 230-40-610. She is requesting that the card room owners and on-duty card room employees no longer be required to show their cards unless there's a possibility of a bad-beat situation. Ms. Gillard feels that requiring owners and on-duty employees to show their cards after each game compromises their playing style and their ability to effectively participate in the game. Staff has made an amendment by adding a new subsection (7) to the rule and is supporting Ms. Gillard's position. Staff recommends its adoption.

Commissioner McLaughlin made a motion seconded by **Commissioner Ludwig** to adopt WAC 230-40-610. *Vote taken; the motion passed unanimously.*

13. Background and Fingerprint Legislation:

WAC 230-04-180

Amy Patjens, Manager, Communication and Legal Department, reported this rule was up for final action. It was filed after the June Commission meeting. Last session Senate Bill 6491 was passed to clarify the Commission's authority to run fingerprints through the federal criminal history system. The new law required that the Commission pass rules to identify which applicants would be subject to fingerprints. The law states that the Commission will take into consideration the nature, character, size, and scope of the license being applied for when passing these rules. Staff wanted to have the provision so they would not be required to get fingerprints and run federal background checks on small, low level, low risk applicants. This rule is to implement that legislation. Staff will continue to do background checks on people they have been doing them on, such as house-banked card rooms, and card room employees, and Class F and above pull-tab operators (people who are bringing in gross receipts of over \$500,000). Section 2 allows the Commission to require these from any other person – if during an investigation, we feel the need for a federal check on someone, the agency maintains that right. Staff recommends approval and adoption within 31 days of filing. There were no questions or public comments.

Commissioner Parker made a motion seconded by **Commissioner Ludwig** to approve the rule with an effective date 31-days after adoption. *Vote taken; the motion passed unanimously.*

Chair Orr recessed the meeting from 10:20 a.m., until 10:40 a.m.

14. Bingo Legislation:

Package 14A: Rules Necessary to Implement the 2002 Bingo Legislation: WAC 230-20-002, WAC 230-04-315 (repeal), WAC 230-12-090, WAC 230-20-104; WAC 230-20-170, WAC 230-50-010:

Cally Cass-Healy reported this package was brought forward as a result of legislative changes to WAC 9.46.0205. The purpose of the law change was to allow charitable and nonprofit organizations to join together in order to save dollars on

operating expenses and apply those dollars toward their stated purposes. It also removes the three-day-a-week operating restriction and requires warning language regarding problem gambling on all promotions and advertisements. Staff worked closely with industry during study sessions and during special meetings held throughout the state over the last several months.

Package 14A requires minimum rule changes needed to implement the legislation. Package 14B includes rules needed to allow shared management within one facility at the request of the licensees. Originally, two fee rules were filed with this package. Those rules have been removed and added to the fee package.

14A(a) WAC 230-20-002 – Sets forth the requirements Bingo licensees must follow when sharing a facility and managing their own Bingo game. One housekeeping change was made to this rule to ensure that all gambling activities conducted at the Bingo hall are included under the regulation of this new rule; Bingo operation was changed to gambling activities.

Commissioner McLaughlin noted there have been many misunderstandings of this legislation, and verified that if a Bingo game wanted to stay exactly the same as they have always been, there's no law that says they can't. **Ms. Cass-Healy** affirmed. Commissioner McLaughlin asked if they wanted to change 90 days from now, there's nothing that says they can't do it then, and, Ms. Cass-Healy affirmed that was also correct. **Representative Wood** said that was exactly what this bill was designed for—not to make it mandatory on anyone; to leave it up to the marketplace to decide what works and in which locality. It has been about a two or three-year project to get to the final bill. Representative Wood hoped that everything would work fine with the rule change. He was concerned, however, if 31 days would be enough time for implementation. **Ms. Cass-Healy** affirmed that is staff's recommendation; however, they have had several licensees come forward with a request to delay implementation because they feel they need more time to get their organizations and the details of the contracts together. Staff still recommends the rule be effective 31 days after filing because the law is already in effect.

Chair Orr called for comments from the legislators. **Senator Winsley** asked for clarification on the 30 day notification process. **Ms. Cass-Healy** responded that there is a requirement in the rule that licensees must give 30 days' notice when they plan to join together -- that they need to turn in their contracts prior to going into operation.

Commissioner McLaughlin thought some people misunderstood the rule effective date 31-days after filing, meant that they had to be ready to go in 31 days. **Ms. Cass-Healy** said that is possible, but that is not the case. **Director Day** noted there is one other point that may be raised; that some organizations may not be able to move that fast, and those that can, may achieve a competitive advantage.

14 A(b) WAC 230-04-315 – This rule currently requires Bingo licensees to notify Commission staff of changes in their Bingo schedule. Staff believes this rule is no longer needed as Bingo games may be offered seven days a week.

14A(c) WAC 230-12-090 – Amended to clarify those Bingo licensees that operate in premises where Bingo is conducted on more than three occasions per week shall post a warning statement in all gambling advertisements and promotions, to come into compliance with the law.

14A(d) WAC 230-20-014 – Cash register method of receipting Bingo income – it allows those who are using one cash register for more than one organization to do so under certain requirements so the Commission may track them.

14A(e) WAC 230-20-170 – An amendment that removes the Bingo three days of operation limit from WAC 230 in order to come into compliance with the new law.

14A(f) WAC 230-50-010 – Allows Bingo operators the opportunity for an adjudicated proceeding in the event the request for extended hours of operation is denied or revoked.

**Package 14B: Shared Management – Requested by the Bingo Licensees:
WAC 230-20-005, WAC 230-20-070**

Ms. Cass-Healy reported that this package sets forth the requirements for Bingo licensees that join together to share not only a facility, but also the management of their Bingo games.

14B(a) WAC 230-20-005 – Requires licensees operating with shared management to declare a lead organization that is primarily responsible for the game to set forth a contract telling how revenue and expenses will be divided, and additional operational details, and that the contract shall be submitted to the Commission at least 30 days prior to going into operation. Bingo operation was changed to gambling activities in this rule to cover all gambling activities in the operation.

14B (b) WAC 230-20-070 – Allows managers to manage both Bingo operations within a shared Bingo facility only. **Ms. Cass-Healy** reported that staff recommends approval of the entire package with an effective date 31 days from filing. **Chair Orr** called for comments on the entire package.

Ronnie Strong, Primary Manager, MS Bingo in Tacoma, and Charter President of Charitable Nonprofit Voice (CNVP), stated that he was in favor of the seven days and felt it would be most beneficial to most licensees if approved and implemented in a timely manner. That would enable all licensees time to prepare the changes. However, in meeting with some Bingo managers and members of their boards and various licensees, there are concerns and consideration is being asked for the halls that are not ready. They feel it would be unfair if the rule is implemented and effective immediately when they are not ready -- a group that is ready would have the advantage over someone else, and they have expressed the need to have rulings that will become effective no sooner than January. It is clear that staff has recommended implementing the 31 day rule. On behalf of the members of CNPV, Mr. Strong asked that the Bingo legislation rules package be approved today and that implementation for the rules follow traditional dates of starting in January. **Commissioner McLaughlin** suggested the group that is ready could hold off even if the date is set for 31 days after filing. Mr. Strong said his organization could do that, but there are others that would not. Mr. Strong affirmed that for his organization, it would be an advantage—if they were even open up to five days, that would give them the advantage over other halls that have their leases and other things that need to be changed, which can't be done overnight.

Director Day noted the Commission originally thought it might be the best route to go slower, and implement the rule in January. However, there were opinions on both sides—those who wanted to get going on seven days right away, and those who wanted to go slower. Staff simply tried to make sure they had all their work done so the rules could be effective. The law has already changed—and that is the significant answer to the question—the Commission needs to change their rule because it is not in compliance with current law.

Commissioner Niemi noted there is a choice; the licensees could go to Court and get a stay, however, they would have to prove irreparable harm, and from the little that has been said, she was not sure they would be successful.

Jerry Ackerman, Assistant Attorney General, explained that the law went into effect June 13th and the problem the Commission faces is that the law is in effect and there are some organizations that have indicated they would be ready to submit the necessary paperwork to be able to take advantage of what the Legislature passed. That left staff in a position where, while the law was in effect, there was no regulatory mechanism to allow them to process the paperwork that came forward to give the applicants the benefit of what the Legislature had done. If the Legislature had chosen to do so, they could have put a January 2003 effective date on the statute. They didn't do that—they didn't even hold it over until the normal starting date of July 1 of this year. Therefore, if the Commission does not take some action to put a regulatory structure in place, Mr. Ackerman was not sure what staff would do with applications. Mr. Ackerman stated that he was not aware of any authority for the Commission to unilaterally not process the applications. He believed there would be a very significant legal question about the ability of the Commission or staff to impose a moratorium when a law has already been passed by the Legislature. He suggested the Commission might not have the ability to impose a moratorium even if they chose to do so. He believed the Commission would be on thin ice if they would do that. While he understands the written comments that have been received by the Commission regarding the competitive disadvantage situation, Mr. Ackerman stated that he also couldn't find anything in the law to suggest that the Commission is responsible to assure that competitive disadvantages do not take place. The marketplace and the businesses regulate that.

Director Day added that the package before them is the best attempt to accommodate both sides of the issues. There were those that wanted to do the shared management side of the equation, and that wasn't really a requirement for the Commission to move forward, as opposed to the seven-day change, which is very clear. Ultimately, staff decided to get both packages ready simultaneously as best as the Commission could to address the competitive advantage issue and at least provide the rule foundation at the same time for all those parties. Chair Orr called for public testimony.

Ric Newgard, Seattle Jr. Hockey, thanked the legislators for supporting this legislation. He asked that whatever decision is made, that the Commission not get sued and spend their license fees fighting that lawsuit. Referring to yesterday's study session, he asked for clarification: Seattle Jr. Hockey is a partner with another 501(3)(c) organization in figure skating. They want to get out of Bingo; they're tired of the struggle; they're turning in their license, and are going to look for sponsorships through corporate donations. Seattle Junior Hockey doesn't want to share a facility or management, just run on its own. He anticipated their profitability would look much brighter -- they want to be able to give money to the figure skaters to keep them skating. Mr. Newgard asked if they could run seven days a week with this legislation and if there would be any reason why they could not give money to another nonprofit organization based upon their increased profits. **Ms. Cass-Healy** responded that agency rules do not prohibit direct or indirect contributions to other nonprofit or charitable organizations. The clarification comes at the point where the agency would not allow it to be based on a percentage of gambling proceeds unless the other organization was qualified and licensed to conduct those gambling activities. However, as a donation, it would be quite acceptable. Mr. Newgard explained that Seattle Junior Hockey has been making X number of dollars over the three days, and they are going to add three or four more days, but they are going to earmark some of that money for someone else. He affirmed the organization wants to share the proceeds, but there needed to be some formula to get there. In the '90s the Gambling Commission mandated they give away a percentage of their profits to other nonprofit organizations, so in the past they have been mandated to use that percentage as criteria for giving away money. Mr. Newgard was interested in using that same formula to give away money to another youth organization. **Commissioner Niemi** thought they were being a little premature. She affirmed that it is a perfectly legitimate question to ask a question of staff as to whether our statutes allow it, and they will answer it. If not, staff will come back to the Commission and have the question posed in a technically more appropriate way. Mr. Newgard said he could do that, but in 31 days, he would like to be up and running.

Jerry Ackerman followed up on Commissioner Niemi's point and said at this point they were talking about a factual situation involving a particular facility (and it may affect others as well), but Commissioner Niemi is right, Mr. Newgard needs to pose the question to staff and get their interpretation on what the current statute and WACs may require. If he doesn't like the answer, then he can take that issue up with the Director and/or the Commission, and he may need to do so in the form of a petition for a rule change. Mr. Ackerman stated that there needed to be something in front of the Commission to look at, to consider, and to decide on, in the context of how it affects everyone that may be concerned with the issue. The Commission does not sit to make decisions on issues that affect individual businesses. They set policy. Mr. Ackerman suggested that if Mr. Newgard couldn't get feedback from staff that satisfied him, then he needed to address his concern in writing, and perhaps in the form of a rule change. **Mr. Newgard** thanked him for his information and said he would follow up. **Commissioner McLaughlin** said that in all fairness, she asked the same question because she had been talked to about this same issue, and she didn't have the answer.

Steve Strand, President of WCCGA, noted there was quite a wide range of opinions within in their group on what is the appropriate implementation date. So much so, that there really isn't an ability for them as an association to take a position on asking for a date. He asked the Commission to exercise due diligence because there are larger factors than opinions and desires that affect the ability of licensees to start-up. There are long-term leases and liabilities that organizations are currently involved in that will have a much bigger impact on whether they can take advantage of this type of legislation, as opposed to someone who is just adding additional days. If someone is vacating a premise, that may not be a viable choice because the idea is to save on expenses and not incur a double rent. He asked the Commission to continue to move forward, and the licensees would work this out as best as they can individually.

Ken Thorstead, President, Brain Injury Association of Washington, noted that he is also an attorney and has practiced administrative law. He affirmed the changes that are contemplated in this package are huge, and they will result in a significant shakedown in the number of operators and licensees. He said he was not here to say that overall this is not a good thing, and it is probably inevitable, and it's good for competition. He was not questioning the wisdom of that, but he questioned the rush to implement the changes. The changes were contemplated within the same breath that facilities could share a joint location, and it wasn't two separate packages. The Legislature said yes, we will allow you to extend, but on the other hand, for the smaller operations and medium operations, you can merge together. As a practical matter, for a smaller or medium-size operation that needs to merge, 31 days is a joke. Everyone knows that when one makes significant business changes, those changes have to take place over months. The last time the Brain Injury Association moved, it cost them approximately \$60-70,000. For a lot of small and medium-sized operations, that's the difference between existing and making money for their nonprofit, and simply going out of business. Mr. Thorstead said that from

a legal standpoint, he didn't understand that if the Commission says they will implement all of the regulations to be effective by January 1, that the Commission is not empowered to do that. He did not agree with Mr. Ackerman's opinion saying it was inconsistent with the body of administrative law. Under most DSHS regulations, there is an empowering law by the Legislature. A lot of time the rules don't implement for 6-18 months because they have to go through very substantial hearing processes; they have to figure out how that is going to impact the various licensees. He suggested to the Commission that one of the purposes of the Commission is to ensure fairness to all licensees; and that there will be a level playing field. In closing, he reported the Charitable Nonprofit Voice, every one of the 11 members of their operation, is against immediate implementation. In practical terms, he believed it was going to take a minimum of three to five months for many licensees to make the contract arrangements, and to make the lease adjustments. They have to go through a process, they have to work out all of the details of the contract, they have to submit it to the AG's Office, and the details have to be approved.

Commissioner McLaughlin responded that the industry knew about the law change in March. **Mr. Thorstead** said they were aware that there was a law change; however, they were also advised by Commission staff, that because of the complexity of the impacts of this legislation, that the rules wouldn't be going forward until January. **Ms. Cass-Healy** affirmed. Initially, when the package came forward, staff did anticipate that it would take a while and anticipated the rules would be effective in January. However, based upon discussions with the industry and the Assistant Attorney General, staff changed the timeline. They also made that known at the June Commission meeting in LaConner.

Senator Winsley indicated that if she had been lobbying the Legislature for two to three years to get this bill passed, she would have been ready to go last April. **Mr. Thorstead** said there were a substantial number of people lobbying the Legislature, and they had every right to do that. He reminded everyone that there are a lot of smaller and medium-sized operations that are not sophisticated; they don't have access to lobbyists and attorneys. They do the best they can, and when they see how involved the proposed changes are, they don't know how to react to that immediately. **Mr. Thorstead** believed this was very rapid. Under most circumstances of administrative law, the process goes much slower. He believed the suggested date of January 1 would be a better predictive date than an implementation 31 days from now.

Commissioner Ludwig said he read Mr. Thorstead's letter very carefully. He affirmed the noble charitable purpose Mr. Thorstead has been working with for the past 10 years is admirable. However, even if an organization didn't know the law was passed in March, they should have been more recently aware since it has already been filed for 60 days (at the meeting), and to do some of their planning. Commissioner Ludwig noted the purpose of this bill was to do more to help the small and struggling charitable operators. The big organizations were at least doing okay at this point. This gave options to operate seven days a week. **Mr. Thorstead** affirmed that it was the purpose of the legislation, and the recognition by the legislators, that there are going to be two ways that people are going to be able to survive. One, they can extend, which is true of Junior Hockey, and they can simply extend because of their position. However, in his situation, they must seek out someone that can share expenses.

Representative Wood said the Legislature anticipated this problem and struggled with it this session—the small and large organizations, trying to balance things out, and whether there was any way to make it perfect. This was the best solution, after three years. Representative Wood asked if there was anything at this point that he could recommend that would improve this situation. **Mr. Thorstead** responded no, several businesses operating at a fair margin would probably be out of business because they couldn't sustain major changes without the ability to plan out what those changes are going to be, and because they couldn't afford a \$50-60,000 hit immediately.

Ernestine Farness, Primary Manager, Seattle J. C. Bingo, expressed appreciation for staff's hard work and everything the Commission has done to get them to seven days of Bingo, she just wished it had been 10 or 15 years ago. She indicated that she didn't have a problem with the rules that are being implemented, and acknowledged that her particular problem is not necessarily the Commission's problem. Ms. Farness advised she has been working with her board and landlord on this issue, but until the legislation was passed, she felt there was no reason to go to her landlord and address the legalities of their lease. If there isn't a legal reason for the Commission to rush into implementing the start date of the rule, she requested the Commission hold off until January 1. At this juncture, it appears that any lease modifications made won't be in effect until January 1 because of prior obligations. Ms. Farness affirmed it would be a disadvantage for their organization if other halls start within 31 days. She emphasized the need to have a level playing field. She thanked the Commission and staff for their hard work and appreciated the Commission's reconsideration for a January start date.

Clyde Bock, Sno-King Bingo, reported that no matter what implementation date is set; he could guarantee there would be people claiming to be adversely impacted. He advised that he knew of at least four verifiable organizations that are close enough on the bubble of going out of business. However, if they can combine within the next month, they can make arrangements to stay in business and progress. Without that, they're going to close their doors. Mr. Bock affirmed that some organizations have already made the decision to close their doors and have given their date. He believed that for every organization that we're going to save, we're going to lose one in a different area. **Commissioner Ludwig** said he was amazed that the Association cannot come to a consensus on this issue. Mr. Bock responded that it was because circumstances are so unique. Commissioner Ludwig asked if Mr. Bock could suggest a compromise. Mr. Bock said he could not because of the legal issue, and knowing any decision to delay the implementation date would be challenged.

Mr. Ackerman advised that he was not unsympathetic to the arguments presented and that he appreciated the various comments; however, the reality is that the law is in effect. The law went into effect June 13th and staff is attempting to establish the rules necessary to make sure the law is being complied with. He didn't believe the Commission had an ability to delay the effective date of the statute. Mr. Ackerman noted the arguments being made today should have been made to the Legislature. Now, the petitioners are asking the Commission to be a super-legislature and change the effective date of the law. Mr. Ackerman was quite clear that the Commission does not have that power. The arguments that have come forward today are asking the Commission to help one organization while it is possibly hurting another one. The standard of review for the Commission's rulemaking would be arbitrary and capricious, if the Commission favored one organization over another. The requirement is to be fair. The way the Commission is fair and neutral is by passing laws that are clear on their face and apply to everyone. He emphasized the law is in effect. The question is, in the event Commission staff gets an application to take advantage of what the Legislature has authorized, how are they going to process it. Staff should have the tools to process the application in a manner that it directs, or it will be processed in a vacuum. Mr. Ackerman cautioned that imposing an effective date in January would not stop the process because most assuredly if the Commission tried to do that, it would be inviting a lawsuit from people who wish to take advantage of what the Legislature and Governor has given them—that's the Commission's legal situation.

Commissioner Ludwig suggested there is no room for compromise. **Mr. Ackerman** affirmed the law is in place. If someone brings an application forward, Commission staff will either have rules to evaluate the application or they'll do it without rules. Mr. Ackerman didn't believe staff would have the option to throw it on the shelf until January.

Commissioner Niemi made a motion seconded by **Commissioner McLaughlin** to approve Items 14A and 14B as presented. **Senator Prentice** advised that she attended the work sessions on this issue, and affirmed this issue has turned into a bigger stinker than she ever imagined. She emphasized that Ms. Cass-Healy and her staff did a wonderfully patient job of listening to the various opinions and came up with the best solution. *Vote taken; the motion passed unanimously.*

Chair Orr expressed his regret for those organizations that were adversely impacted and appreciates their concerns.

RULES UP FOR DISCUSSION AND POSSIBLE FILING

15. Regulatory Fee Increase and Expanding Bingo and PB/PT Classes:

WAC 230-04-202, WAC 230-04-203, WAC 230-04-204, WAC 230-08-017:

Amy Patjens reported that there are limits on the amount of fee increases due to Initiative 601, and it must be consistent with the fiscal growth factor, which for this year was 3.29 percent. Staff has been reassessing the budget, and revenues have ended up a little bit better than their estimates. When the rules are up for final action in November, staff will likely ask that the implementation be delayed until June 30th rather than implementing fee increases in December.

The items in 15A contain the fees for charitable operators. They have not had a fee increase for three years. Last month, the Commission filed rules to expand the license classes for the Bingo operations and those rule changes have been incorporated into this proposal. The practice for setting fees has been that as the gross receipts increase, the fees should also increase given the extra work that is usually associated with larger operations. Since the Bingo rules will go into effect next month, as has just been voted, charitable operators would be able to expand their operations now; however, they would not have any fee changes for about nine months, assuming this rules package is ultimately passed.

Item 15B deals with the fees for commercial operators. Again, to be consistent, staff added the expanded license classes

for pull-tab operators.

Item 15C deals with fees for individuals.

Item 15D deals with different fees for identification stamps. Identification stamps are the stamps placed on each pull-tab and amusement game; they are used to track games and equipment. **Ms. Patjens** noted one small change was submitted at the request of licensees; staff added a fee to allow Bingo operators to buy 5,000 cards for linked Bingo games rather than just 250. She affirmed this a new fee, the rest are the same and are consistent with the fiscal growth factor. Staff recommends filing the rules package for discussion. There were no questions.

Commissioner Ludwig made a motion seconded by **Commissioner McLaughlin** to file Item 15. *Vote taken; the motion passed unanimously.*

Rick Newgard clarified that if this rule is filed, his license fees for pull-tabs would increase from \$10,200 to \$15,000 overnight, which, for him, is not a 3.29 percent increase; it is a 38 percent increase. Bingo fees would increase from \$12,900 to \$14,500 which is also a substantial increase above the fiscal growth factor.

Steve Strand, WCCGA, understood the change and increase in the number of classes for the Bingo license and the change in the ability to operate. He noted that pull-tabs have always been available seven days a week, and, it seemed to him that the nonprofit charitable organizations were being used as a scapegoat for the commercial operators. He emphasized that the charitable nonprofit pull-tab licensees are a small percentage of the overall pull-tab licensees issued by the state.

There were no other comments.

16. Other Business/General Discussion/Comments from the Public.

Chair Orr called for public comments. None.

17. Adjournment:

With no further business, Chair Orr adjourned the meeting at 11:50 a.m. The next meeting is scheduled for October 10th and 11th in Spokane.

Minutes submitted by:
Shirley Corbett
Executive Assistant